

STATE OF UTAH

OFFICE OF THE ATTORNEY GENERAL



JAN GRAHAM
ATTORNEY GENERAL

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MAR 28 1996

WATER RIGHTS
SALT LAKE


CAROL CLAWSON
Solicitor General

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Chief Deputy Attorney General

PALMER DePAULIS
Chief of Staff

MEMORANDUM

TO: LEE SIM, Assistant State Engineer
KIRK FORBUSH, Regional Engineer - Richfield

FROM:  JOHN H. MABEY, JR., Assistant Attorney General

DATE: March 28, 1996

RE: Storage Right for Gunnison Irrigation Company

Attached is a copy of a letter from Steve Clyde regarding the interpretation of storage rights for Gunnison Irrigation Company.

Please review. I will arrange a conference call for the week of April 1 to discuss this among ourselves.

Attachment

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* ALSO ADMITTED IN WASHINGTON, D.C.

March 25, 1996

Mr. John Mabey, Jr., Esq.
Assistant Attorney General
1636 West North Temple
Suite 300
Salt Lake City, Utah 84116

Re: Gunnison Irrigation Company

Dear John:

As I indicated to you in our conversation today, Gunnison Irrigation Company is pleased with the position stated by Lee Sim in his letter of March 20, 1996 to Gunnison and to Gunnison-Fayette Irrigation Companies, regarding the issue of whether the State Engineer could go behind the Cox Decree in interpreting the company's water rights. However, Gunnison must take exception to the statement contained in the last paragraph on the first page of Lee's letter, where he states that Gunnison's storage right in Gunnison Reservoir was 20,264.2 acre feet, and that this was "the total amount of water the company can put into storage in any one year."

As you will recall, the Cox Decree expressly provides that Gunnison may store, withdraw and then refill the reservoir each year. Since the company has the right to store, withdraw and then refill the reservoir, its storage right could not be limited to a total quantity of 20,264.2 acre feet each year. Instead, the company's storage right is limited by the water supply available each year and the physical storage capacity of the reservoir.

Therefore, Lee's interpretation of Gunnison Irrigation Company's storage right, as expressed in his March 20, 1996 letter, is in direct conflict with the express language of the Cox Decree. I would appreciate your meeting with Lee at your earliest convenience to discuss this issue, and request that a further letter be issued to clarify this additional question.

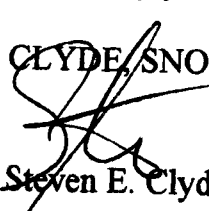
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Mr. John Mabey, Jr., Esq.
March 25, 1996
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If you have any questions about this, please give me a call.

Best regards.

Very truly yours,


CLYDE, SNOW & SWENSON, P.C.

Steven E. Clyde

CC: Eugene Jensen
D. Brent Rose, Esq.